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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

MARC WOLSTENHOLME,  
Plaintiff,  
v.  
RIOT GAMES, INC.,  
Defendant.

Case No. 2:25-cv-00053-FMO-BFM

*Hon. Fernando M. Olguin*

**DEFENDANT RIOT GAMES, INC.'S  
OPPOSITION TO PLAINTIFF  
MARC WOLSTENHOLME'S  
MOTION IN LIMINE TO ADMIT  
EVIDENCE**

Date: February 27, 2025  
Time: 10:00 a.m.  
Crtrm: 6D

[Opposition to Motion for Leave to File  
Second Amended Complaint; Request for  
Judicial Notice; and Declaration of Aaron  
J. Moss in Support of Request for Judicial  
Notice Filed Concurrently Herewith]

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**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. PLAINTIFF’S MOTION IN LIMINE IS PROCEDURALLY  
IMPROPER AND SHOULD BE DENIED.**

On January 29, 2025, Plaintiff Marc Wolstenholme (“Wolstenholme”) filed a Motion for Leave to File a Second Amended Complaint (“SAC”) (Dkt. 28) which, for the reasons set forth in Defendant Riot Games, Inc.’s (“Riot”) concurrently filed opposition, suffers from a host of foundational defects. On the same day, Wolstenholme also filed a “Motion *in Limine* to Admit Evidence.” Dkt. 30.<sup>1</sup>

A motion *in limine* to admit evidence before the pleadings are at issue and discovery has even commenced, much less closed, is not a proper procedural vehicle. As the Court is aware, but as Wolstenholme, as a *pro se* plaintiff, may not be, a motion *in limine* is a tool to resolve evidentiary issues that are anticipated to arise at trial. See *City of Pomona v. SQM N. Am. Corp.*, 866 F.3d 1060, 1070 (9th Cir. 2017). A motion *in limine* to admit evidence is a “method of asking the court for an ‘advisory opinion,’ regarding the admissibility of evidence [to be offered at trial], which the court has authority to provide or to decline to provide.” *Nazarian v. Beverly Hills*, No. CV 19-4391 DSF (EX), 2021 WL 2638993, at \*4 n.6 (C.D. Cal. Feb. 8, 2021). Requesting that the Court make a judgment about the admissibility of “evidence”<sup>2</sup> for trial before the pleadings have been settled, before a scheduling order has been issued, and before discovery has even opened, is simply not appropriate, and is not a good use of judicial resources. See generally *Fed. R. Civ. Pro. 16 and 26*. The motion should therefore be denied as an improper and premature procedure.

<sup>1</sup> The Court has already struck six other “motions *in limine*” in this action. See Dkt. 18, 26 (striking Dkt. 17, 20, 21, 22, 23, and 24).

<sup>2</sup> In point of fact, what Wolstenholme is offering is not evidence at all, but simply argument about purported similarities between his work and Riot’s work.

1 **II. THE PROFERRED “EVIDENCE” IN NO WAY IMPACTS RIOT’S**  
2 **CONCURRENTLY FILED OPPOSITION TO PLAINTIFF’S**  
3 **MOTION FOR LEAVE.**

4 While there is no need to consider the substance of the motion, to the extent  
5 the motion is being offered to support Wolstenholme’s Motion for Leave to File a  
6 SAC, nothing in his motion *in limine* would justify granting Wolstenholme’s  
7 Motion for Leave. Concurrently with this filing, Riot has filed an opposition to  
8 Wolstenholme’s Motion for Leave to File a SAC which explains that the SAC is  
9 futile, among other reasons, because (1) Wolstenholme has not complied with the  
10 Copyright Act’s registration requirement and (2) his proposed SAC does not  
11 plausibly allege copying of protected expression that would support a copyright  
12 claim.

13 At most, the sort of “comparison of characters and story arcs” contained in  
14 this motion *in limine* go to the second argument about whether Wolstenholme has  
15 adequately alleged copying of protected expression. But the first defect—failure to  
16 comply with the registration requirement—is case dispositive and precludes a  
17 granting of leave to amend. “[P]ermitting amendment to cure a claimant’s failure  
18 to register its copyright before suing would undermine the objectives animating the  
19 Supreme Court’s decision in *Fourth Estate*,” and is contrary to 17 U.S.C. § 411(a)’s  
20 requirement that registration be made before instituting the action. *Izmo, Inc. v.*  
21 *Roadster, Inc.*, 2019 WL 2359228, at \*2 (N.D. Cal. June 4, 2019); *see also*  
22 *Washoutpan.com, LLC v. HD Supply Constr. Supply Ltd.*, 2019 WL 9050859, at \*2  
23 (C.D. Cal. Aug. 5, 2019) (plaintiff who filed suit before obtaining a copyright could  
24 not “cure that defect by amending the complaint after the Copyright Office  
25 completed registration of the copyright.”). These “comparison of characters and  
26 story arcs” therefore could not save his claims, even if they were sufficient to  
27 plausibly allege substantial similarity of protected expression.

28 While the Court certainly need not wade into the details of these allegations,

1 reviewing them may be helpful to understand exactly how meritless  
2 Wolstenholme’s claims are. Wolstenholme compares Viktor, a character in Riot’s  
3 *Arcane* to “central elements of Bloodborg: The Harvest.” Mot. at 3:6-8. His  
4 comparison supposedly shows similarities between the “themes” of Viktor’s  
5 “physical weakness and cybernetic enhancement” and characters in “Bloodborg”  
6 that similarly “struggl[e] with physical degradation.” Mot. at 6:13-7:4. Such broad  
7 and commonplace literary devices cannot support a claim for infringement.  
8 *Cavalier v. Random House, Inc.*, 297 F.3d 815, 823 (9th Cir. 2002) (“Familiar stock  
9 scenes and *themes* that are staples of literature are not protected.”) (emphasis  
10 added). Wolstenholme also claims that both Viktor and characters in  
11 Wolstenholme’s “Bloodborg” are impacted by “systemic oppression” or “societal  
12 divisions.” Mot. at 8:8-24. Riot need not belabor the point, but the fact that what  
13 Wolstenholme apparently views as his best evidence relates to supposed similarities  
14 of broad themes—for which no one may claim protection or infringement—  
15 randomly scattered throughout the works, confirms that Wolstenholme’s claims  
16 lack any plausibility. No amount of allegations of this caliber can support a claim  
17 for copyright infringement.

### 18 19 **III. CONCLUSION**

20 For the foregoing reasons, Riot respectfully requests that the Court deny  
21 Wolstenholme’s motion *in limine* in full.

22 DATED: February 5, 2025

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23  
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28

**CERTIFICATE OF COMPLIANCE**

The undersigned, counsel of record for Defendant Riot Games, Inc., certifies that this Memorandum of Points and Authorities contains 846 words in compliance with the word limit of Local Rule 11-6.1.

DATED: February 5, 2025

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